

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
GEORGE P. BELCHER)

For Appellant: Peter T. Chamberlin
Counsellor at Law

For Respondent: Jean Harrison Ogrod
Counsel

O P I N I O N

This appeal is made pursuant to section 18593 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of George P. Belcher against a proposed assessment of additional personal income tax in the amount of \$10,226.00 for the year 1976. Appellant has acquiesced in that portion of the assessment which relates to tax assessed on preference income and respondent now concedes, for reasons to be stated hereafter, that the remaining deficiency should be reduced, leaving \$8,181.17 as the amount still in controversy.

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The sole question presented by this appeal is whether respondent Franchise Tax Board has properly applied section 17299 of the Revenue and Taxation Code so as to disallow certain expense deductions claimed by appellant for 1976 in connection with rental property owned by him which had been determined to be substandard housing.

Appellant owns certain rental real property located at 22 Terra Vista Avenue, San Francisco, California, comprised of seven buildings containing a total of 64 apartment units. The San Francisco Bureau of Building Inspection (BBI) inspected appellant's property and notified him on March 12, 1975, that each of the seven buildings was in violation of certain health, safety and/or building codes. Appellant alleges that upon receiving notice of the violations, he contacted the BBI and had numerous discussions with various inspectors regarding the nature and extent of corrective work necessary on the premises.

Subsequently, the BBI inspected the property again and determined that the code violations continued. On February 6, 1976, it issued seven notices of noncompliance to appellant, one for each of the buildings on Terra Vista Avenue. Those notices advised appellant that unless the substandard conditions were corrected within ten days, or an appeal was filed with **the Abatement Appeals Board** of the BBI within that same period, copies of the notices of noncompliance would be sent to respondent, pursuant to the provisions of section 17299 of the California Revenue and Taxation Code. The BBI also informed appellant of the tax consequences of its being obliged to notify respondent of his noncompliance.

Appellant did not file an appeal with the Abatement Appeals Board, nor did he correct the substandard conditions within the time prescribed. The BBI therefore mailed copies of the notices of noncompliance to respondent. As of December 31, 1976, respondent had not been notified that the properties had been brought to a condition of compliance.

Upon examination of appellant's 1976 California personal income tax return, respondent noted that he reported gross rental income in the amount of \$151,597.00 from the Terra Vista Avenue properties. In that same return appellant claimed deductions for interest, taxes and depreciation relating to those properties in the total amount of \$96,347.00. On the basis of the notices received from the BBI, respondent initially determined

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that appellant's period of noncompliance in 1976 extended over eleven months of the year. Accordingly, respondent disallowed eleven-twelfths of appellant's claimed deductions for interest, taxes and depreciation relating to the Terra Vista Avenue properties. (See last sentence of subdivision (c) of Revenue and Taxation Code section 17299.) Appellant protested the resulting deficiency assessment and, when respondent affirmed its action, appellant filed this timely appeal. Respondent now concedes that appellant's period of noncompliance in 1976 was ten full months, rather than eleven, and that the proposed assessment therefore should be reduced to \$8,181.17 to reflect the disallowance of only ten-twelfths of the deductions in question.

The facts, issues and arguments in this case are substantially similar to those presented in the Appeal of Robert J. and Vera Cort, decided this day. In that opinion, we discussed in some detail the relevant law and the propriety of respondent's disallowance of the deductions claimed in connection with property which had been determined to constitute substandard rental housing. For the reasons set forth in that opinion, we conclude that respondent's action in this matter likewise was in complete conformity with the law and must be sustained.

O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

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IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of George P. Belcher against a proposed assessment of additional personal income tax in the amount of \$10,226.00 for the year 1976, be and the same is hereby modified in accordance, with respondent's concession that the amount of the proposed assessment should be reduced to \$8,181.17. In all other respects, the action of the Franchise Tax Board is sustained.

Done at Sacramento, California, this 21st day
of May , 1980, by the State Board of Equalization.

<u><i>Philip Lee</i></u>	, Chairman
<u><i>Ernst A. Monenburg</i></u>	, Member
<u><i>George P. Belcher</i></u>	, Member
<u><i>William H. Russell</i></u>	, Member
_____	, Member